

### **Remarks**

Claims 1-6 are pending in the application and are presented for the Examiner's review and consideration. Claim 5 has been amended, and claim 7 has been canceled. Applicant submits that the claim amendments and the accompanying remarks herein serve to clarify the present invention and are independent of patentability. No new matter has been added.

#### **Information Disclosure Statement**

In the Office Action, the Examiner stated that certain references were listed in the specification but were not included in an information disclosure statement (IDS). For these references to be considered by the Examiner, Applicant will provide an IDS under 37 C.F.R. §1.97(c).

#### **Drawing Objection**

The drawings were objected to because some reference numbers, lines, and figures are too dense and dark, and not uniformly thick. In response, Applicant has provided herewith a set of replacement drawings. Applicant submits that the replacement drawings are in compliance with 37 C.F.R. §1.84 and do not include new matter.

#### **Specification Objection**

The disclosure was objected to because of an informality. Applicant has corrected this informality as described in the "Amendments to the Specification" section of this Response. Also, the Examiner provided suggested guidelines for the arrangement of the specification. Accordingly, Applicant has amended the specification to include section headings as described in the "Amendments to the Specification" section.

#### **Claim Objections**

Claims 5 and 7 were objected to under 37 C.F.R. §1.75(c) as being of improper dependent form. In response, Applicant has amended claim 5 to include proper antecedent basis.

Support for the amendment may be found on page 6 of the specification and in the figures. Also, contrary to the Examiner's assertion, Applicant contends that claim 5 does further limit the subject matter of claim 1 in that claim 5 recites a structural strength limitation. To expedite prosecution, Applicant has canceled claim 7.

#### Rejection under 35 U.S.C. §103

Claims 1-7 were rejected under 35 USC §103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0107891 to Kohen ("Kohen") in view of U.S. Patent No. 6,135,800 to Majors ("Majors"). In response, Applicant respectfully submits that this rejection is in error and should be withdrawn.

Before analyzing claims for a §103 rejection, "...it must be known whether a patent or publication is in the prior art under 35 U.S.C. § 102." *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593, 1597 (Fed. Cir.), *cert. denied*, 481 U.S. 1052 (1987). Subject matter that is prior art under 35 U.S.C. §102 can be used to support a rejection under section 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981).

Applicant respectfully contends the Kohen is not prior art under §102. Regarding §102(a), Applicant's disclosure of his or her own work within the year before the application filing date cannot be used against him or her under 35 U.S.C. 102(a). *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982). MPEP §2132.01. Kohen was published on June 12, 2003, while the present invention claims foreign priority to November 24, 2003. Kohen published within one year preceding the date of invention of the present invention. Also, Kohen and the present invention have identical authorship. That is, both Kohen and the present invention were authored solely by Ran Kohen.

With respect to §102(b), if one discloses his or her own work more than 1 year before the filing of the patent application, that person is barred from obtaining a patent. *In re Katz*, 687 F.2d 450, 454, 215 USPQ 14, 17 (CCPA 1982). MPEP §2133. As previously explained, Kohen was not disclosed more than 1 year before the filing date of the present invention.

Regarding §102(e), specifically §102(e)(1), an application for patent, published under section §122(b), by another filed in the United States before the invention by the applicant for patent may be used as prior art. "Another" means other than applicants, *In re Land*, 368 F.2d

866, 151 USPQ 621 (CCPA 1966), in other words, a different inventive entity. The inventive entity is different if not all inventors are the same. MPEP §2136.04. The inventive entity of Kohen and of the present invention is the same; the inventive entity is Ran Kohen.

Additionally, Applicant contends that §102(c), (d), (f), and (g) do not apply. Accordingly, Applicant respectfully submits that Kohen is not prior art under §102, and therefore, the rejection under §103(a) is improper.

### Conclusion

In light of the foregoing, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

A fee of \$60 is believed to be due for a one-month extension of time. Please charge any required fees (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 503410 (Docket No. 7014-A06-005).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. D. Bianco', with a stylized flourish at the end.

Paul D. Bianco, Reg. # 43,500

Customer Number: 27317  
Paul D. Bianco  
FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO  
21355 East Dixie Highway, Suite 115  
Miami, Florida 33180  
Tel: 305-830-2600; Fax: 305-830-2605  
e-mail: [pbianco@focusonip.com](mailto:pbianco@focusonip.com)